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6 HEARTLAND PAYMENT SYSTEMS, LLC and
HEARTLAND PAYMENT SOLUTIONS, INC.
7

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10
11 JOSEPHINE E. BACCAY, on behalf
of herself, all others similarly
situated,

12 Plaintiff,

13 v.

14
15 HEARTLAND PAYMENT
SYSTEMS, LLC, a Delaware limited
liability company; HEARTLAND
PAYMENT SOLUTIONS, INC., a
Delaware corporation; and DOES 1
to 100, inclusive,

16 Defendants.

17 Case No.

18
19 **DEFENDANTS HEARTLAND
PAYMENT SYSTEMS, LLC AND
HEARTLAND PAYMENT
SOLUTIONS, INC.'S NOTICE OF
REMOVAL (PURSUANT TO
FEDERAL QUESTION
JURISDICTION AND CLASS ACTION
FAIRNESS ACT)**

20 Pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1453, and 1446, Defendants
21 Heartland Payment Systems, LLC (“Heartland Systems”) and Heartland Payment
22 Solutions, Inc. (“Heartland Solutions”) (collectively, “Defendants”), hereby remove
23 this action, and state as follows:

24 1. This action was filed in the Superior Court of the State of California for the
25 County of Sacramento on May 22, 2017.

26 2. Heartland Systems and Heartland Solutions are the only named defendants
27 relevant for the purposes of removal. *See* 28 U.S.C. § 1441(b)(1) (“the citizenship
28 of defendants sued under fictitious names shall be disregarded”).

1 3. Without waiving any defenses regarding service of process (or lack thereof),
 2 Defendants state that they were served with and received notice of this action on
 3 June 5, 2017, when they were served with the Complaint. (*See* Service of Process
 4 Transmittal (Exhibit A at 1); *see also* Declaration of Devin Parrish (“Parrish Decl.”)
 5 ¶ 3 (Exhibit B); Exhibit C (at Proofs of Service).) Hence, Defendants have timely
 6 filed this Notice of Removal pursuant to 28 U.S.C. § 1446(b) because it is filed
 7 within 30 days of receipt by, and such service on, Defendants of the Complaint.

8 4. On information and belief, named plaintiff Josephine Baccay (“Plaintiff” or
 9 “Baccay”) is a citizen of California.

10 5. Heartland Systems is a limited liability company organized under the laws of
 11 Delaware with its principal place of business in Georgia. Heartland Systems’ sole
 12 member is Global Payments Inc., which is a Georgia corporation with its principal
 13 place of business in Georgia. (Parrish Decl. ¶ 4.) Thus, Heartland Systems is a
 14 citizen of Georgia. *See Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894,
 15 899 (9th Cir. 2006).

16 6. Heartland Solutions is a Delaware corporation with its principal place of
 17 business in Georgia. (Parrish Decl. ¶ 5.) Thus, Heartland Solutions is a citizen of
 18 Delaware and Georgia. *See* 28 U.S.C. § 1332(c)(1).

19 7. Baccay alleges that Defendants have willfully violated the Fair Credit
 20 Reporting Act (“FCRA”) (Compl. ¶¶ 34, 35, 38); the California Investigative
 21 Consumer Reporting Agencies Act (“ICRAA”) (Compl. ¶¶ 55, 57); and the
 22 California Consumer Credit Reporting Agencies Act (“CCRAA”) (Compl. ¶ 69).
 23 Baccay also claims that Defendants violated California’s Business and Professions
 24 Code, Section 17200. (Compl. ¶¶ 73–85.) Defendants deny Baccay’s allegations.

25 8. Baccay purports to bring this action on behalf of three classes of plaintiffs:

26 A. “All of Defendants’ current, former and prospective applicants for
 27 employment in the United States who applied for a job with
 28 Defendants at any time during the period beginning five years prior to

the filing of this action and ending on the date that final judgment is entered in this action.” (Compl. ¶ 11(A) (FCRA Class).)

B. “All of Defendants’ current, former, and prospective applicants for employment in California, at any time during the period beginning five years prior to the filing of this action and ending on the date that final judgment is entered into [sic] this action.” (Compl. ¶ 11(B) (ICRAA Class).)

C. “All of Defendant’s [sic] current, former, and prospective applicants for employment in California, at any time during the period beginning seven years prior to the filing of this action and ending on the date that final judgment is entered in this action.” (Compl. ¶ 11(C) (CCRAA Class).)

9. Jurisdiction is proper in this court under 28 U.S.C. § 1331 because the Complaint asserts a federal question cause of action over which this Court has original jurisdiction. Specifically, Baccay has asserted a claim for violations of the FCRA, a federal statute. (Compl. ¶¶ 20–41.)

10. Jurisdiction is also proper in this court under the Class Action Fairness Act (“CAFA”) because (1) the amount in controversy exceeds \$5 million, exclusive of interest and costs; (2) the putative plaintiff class includes more than 100 members; and (3) at least one member of the putative plaintiff class is a citizen of a state different from at least one Defendant. *See* 28 U.S.C. §§ 1332(d), 1453, 1711–15.

11. In the 5 years preceding the filing of the complaint, many of the persons who applied for employment with Heartland Systems are citizens of states other than Delaware or Georgia. (Parrish Decl. ¶ 8.)

12. Baccay defines the putative class as including all current, former and prospective applicants during the five-year period May 22, 2012, until May 22, 2017. (Compl. ¶ 11.) There were over 50,000 applicants during the five-year period May 22, 2012, until May 22, 2017. (Parrish Decl. ¶ 7.) Moreover, during

1 that same period, Heartland Systems hired over 5,000 individuals (each of whom
 2 was an applicant). (*Id.*)

3 13. The putative plaintiff class contains more than 100 members. (*See* Compl.
 4 ¶ 13 (“The class members are so numerous that the individual joinder of each
 5 individual class member is impractical.”); Parrish Decl. ¶ 7.)

6 14. Defendants deny that they are liable to Baccay or the putative plaintiff class
 7 for any amount of damages. Without waiving that denial, and solely for the
 8 purpose of establishing the amount in controversy, Defendants state that the amount
 9 in controversy, excluding interest and costs, exceeds \$5 million in the aggregate.

10 15. Baccay has alleged willful violations of the FCRA and expressly seeks
 11 statutory penalties, civil penalties, punitive damages, and attorneys’ fees. (Compl.
 12 ¶¶ 34, 40, Prayer for Relief.) While Defendants deny that allegation, if they are
 13 found to have engaged in willful violations of the FCRA, they are liable for actual
 14 damages of “not less than \$100 and not more than \$1,000” per violation, “such
 15 amount of punitive damages as the court may allow,” and “reasonable attorney’s
 16 fees as determined by the court.” 15 U.S.C. § 1681n(a)(3) (FCRA). Given that
 17 there have been more than 50,000 applicants during the five years prior to the date
 18 the Complaint was filed (Parrish Dec. ¶ 7), even if the minimum penalty of \$100
 19 per violation were imposed, the amount in controversy exceeds \$5 million. Further,
 20 Baccay has expressly alleged that Defendants acted willfully and are thus subject to
 21 the maximum statutory damages of \$1,000 per violation. (*See, e.g.*, Compl. ¶¶ 34,
 22 35, 38, 40.) Thus, given that Heartland Systems and Heartland Solutions hired over
 23 5,000 applicants during the relevant period, the amount in controversy just for the
 24 hired applicants exceeds \$5 million, *i.e.*, the alleged \$1,000 penalty for each of the
 25 over 5,000 hired applicants. Indeed, the \$5 million figure does *not* include any
 26 attorney’s fees Baccay and the putative class can recover under the FCRA, which
 27 this Court should consider when determining the amount in controversy. *See, e.g.*,
 28 *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (“where an

1 underlying statute authorizes an award of attorney's fees, either with mandatory or
2 discretionary language, such fees may be included in the amount in controversy.");
3 *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004, 1010-11 (N.D. Cal.
4 2002) (in determining the amount in controversy, the court should consider "a
5 reasonable estimate of fees likely to be recovered).¹

6 16. Baccay has also alleged willful violations of the ICRAA and CCRAA.
7 (Compl. ¶¶ 57, 59, 69, 71.) While Defendants deny those allegations, if they are
8 found to have engaged in willful violations of the CCRAA or ICRAA, they are
9 subject to paying actual damages, punitive damages, and attorney's fees. Cal. Civ.
10 Code § 1785.31(a)(2); Cal. Civ. Code § 1786.50(a)(1), (a)(2), (b). These claims,
11 and Baccay's and the putative class' potential recovery thereunder, further increase
12 the amount in controversy above the \$5 million threshold.

13 17. Venue is proper in the Sacramento division of this Court because Baccay
14 filed this action in Sacramento County. *See* 28 U.S.C. § 84(b); L.R. 120 &
15 Appendix A.

16 18. True and correct copies of all state process, pleadings, and orders are
17 attached hereto as Exhibit C.

18 19. On the same day they file this notice, Defendants will file with the Clerk of
19 Court for the Superior Court of the State of California for the County of
20 Sacramento a copy of this Notice of Removal, and serve written notice on
21 Plaintiff's counsel of record.

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27 ¹ Some courts have held that the court should only consider the amount of attorney's fees incurred
28 as of the date of the removal. *See Faulkner v. Astro-Med, Inc.*, No. C 99-2562 SI, 1999 WL
820198, at *4 (N.D. Cal. Oct. 4, 1999). The Ninth Circuit has not resolved this issue.

1 DATED: July 3, 2017

KABAT CHAPMAN & OZMER LLP

2 /s/ Kristapor Vartanian

3 By:

KRISTAPOR VARTANIAN _____

4
5 Attorneys for Defendants
6 HEARTLAND PAYMENT SYSTEMS, LLC
and HEARTLAND PAYMENT SOLUTIONS,
INC.

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PROOF OF SERVICE

U.S. DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA

I am employed in the County of Fulton, State of Georgia; I am over the age of 18 and not a party to the within action; my business address is 171 17th Street NW, Suite 1550, Atlanta, Georgia 30363.

On July 3, 2017, I served the foregoing document(s) described as **DEFENDANTS HEARTLAND PAYMENT SYSTEMS, LLC AND HEARTLAND PAYMENT SOLUTIONS, INC.'S NOTICE OF REMOVAL (PURSUANT TO FEDERAL QUESTION JURISDICTION AND CLASS ACTION FAIRNESS ACT)** on the interested parties to this action by delivering a copy thereof in a sealed envelope addressed to each of said interested parties at the following address(es): SEE ATTACHED LIST

- (BY MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in Atlanta, Georgia. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.
 - (BY ELECTRONIC SERVICE)** by causing the foregoing document(s) to be electronically filed using the Court's Electronic Filing System which constitutes service of the filed document(s) on the individual(s) listed on the attached mailing list.
 - (BY E-MAIL SERVICE)** I caused such document to be delivered electronically via e-mail to the e-mail address of the addressee(s) set forth in the attached service list.
 - (BY OVERNIGHT DELIVERY)** I served the foregoing document by FedEx, an express service carrier which provides overnight delivery, as follows: I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.
 - (BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the offices of the above named addressee(s).
 - (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury that the above is true and correct.

Executed on July 3, 2017, at Atlanta, Georgia.

Shirl Washington

SERVICE LIST

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